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July 16, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW., Room 220
Washington, DC 20554

Re: CC Docket No. 92-77

Dear Mr. Caton:

Enclosed please find the original and 9 copies of the Comments of the National Association of Attorneys General Telecommunications Subcommittee to be filed in the above matter.

Thank you for your consideration.

Very truly yours,

Neil G. Fishman
Assistant Attorney General

NGF:md
Enc.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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IN THE MATTER OF

BILLED PARTY PREFERENCE FOR INTERLATA 0+ CALLS

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

CC Docket No. 92-77

Release No. FCC 96-253

(Released June 6, 1996)

COMMENTS OF THE
Telecommunications Subcommittee of the
Consumer Protection Committee of the
National Association of Attorneys General

JULY 17, 1996

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("the Attorneys General"), submits these comments in response to the Federal Communication Commission's Second Further Notice of Proposed Rulemaking ("SFNPRM"), in CC Docket No. 92-77, In the Matter of Billed Party Preference for InterLATA Calls, Release No. FCC 96-253 (June 6, 1996).

The Attorneys General applaud the Commission's intention to provide protection against unreasonable and unjust OSP rates. In particular, the Attorneys General support disclosures to consumers that simply and accurately present rate information. Consumers are best served by knowing the identity of the OSP and the price of the call they are about to place before the call is connected. This is best accomplished by requiring clear disclosure of the OSP's identity and of all charges for the first minute and for each subsequent minute. Consumers would then have complete information for making informed decisions. The Attorneys General also urge the Commission to maintain informational tariffing requirements for OSPs.

I. INTRODUCTION AND BACKGROUND

Billed Party Preference (BPP) is a system of routing operator-assisted interLATA calls through the consumer's chosen carrier. Under this system, unfamiliar operator service providers ("OSPs") with unknown, and sometimes excessive, rate structures could not bill unsuspecting consumers. Despite this significant benefit to consumers, the BPP system's cost appears to be substantial, and many reservations have been voiced against BPP's adoption.

The Attorneys General responded to the Commission's earlier request for alternatives to BPP by proposing that OSPs provide an oral disclosure to consumers, prior to connecting the call, warning of the potential for higher rates than charged by the consumer's regular carrier. The

Attorneys General also indicated that disclosure when a satisfactory benchmark was exceeded might solve some of the problems facing consumers.

An alternative proposal ("the CompTel Proposal") would delineate a benchmark rate. The proposed rates include a first-minute limit of $3.75, $7.00 for a nine-minute call, and $.35 per minute for each minute over nine minutes. While rates below these levels would be presumptively lawful, those above these standards would not be per se unjust and unreasonable, but would merely be subject to regulatory scrutiny. The Attorneys General continue to oppose this approach.

The Common Carrier Bureau solicited comments on the proposals, and many parties responded. Having reviewed the comments, the Commission has now requested comment on various alternatives to BPP that could be adopted immediately. The Commission also requested comment on requiring all OSPs to disclose their rates on all 0+ calls and on reducing informational tariff requirements for OSPs.

The Commission has tentatively concluded that it should: (1) establish benchmarks that reflect consumers' expectations of the cost of a call; and (2) require OSPs whose rates exceed the benchmark by a given percentage to disclose all charges before connecting a call.

II. THE ATTORNEYS GENERAL SUPPORT DISCLOSURE OF ALL OSP RATES AND CHARGES OR THE FIRST MINUTE AND FOR EACH SUBSEQUENT MINUTE FOR ALL 0+ CALLS.

The problem of excessive charges by some OSPs remains extremely serious and is not likely to disappear if consumers remain uninformed about the charges they will incur. Immediate corrective steps are necessary to give consumers the ability to make reasonable decisions when they consider placing 0+ calls In previous comments, the Attorneys General favored alternatives

designed to provide consumers with sufficient accurate information to make sound, reasoned decisions regarding OSP services.

None of the alternatives in the SFNPRM would give consumers the same freedom of carrier choice as BPP. However, certain options would provide consumers with significantly greater protection than now exists regarding 0+ calls by some OSPs. The Attorneys General in previous filings have set forth their concerns about excessive OSP charges.[1/]

The Attorneys General recognize that OSPs cannot now provide written, call-specific rate information or written estimates of the cost of a given call before that call is connected. Consumers of other products can simply look at a price tag, label or LED display and quickly determine how much a product will cost. Here, consumers face a more arduous task. Consumers will continue to find it time consuming, if not impossible, to compare cost information of different providers before using a public phone to place a long-distance call.

The current amount of OSP rate information available to consumers can be immediately increased. Of the suggested alternatives in the SFNPRM, requiring all OSPs promptly to disclose all charges before the call is connected would provide the most complete rate information. The Attorneys General are not opposed to a reasonable benchmark system but believe that universal disclosure would be administratively simpler, more informative, and fair.

A. Universal Rate Disclosure

The Attorneys General support universal rate disclosure to the paying party. This would require OSPs to disclose all charges, including but not limited to time-sensitive rates, operator-handling surcharges, and commissions. This also requires pre-acceptance disclosures to

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[1/] The Attorneys General incorporate their prior filings in this docket to the extent they are consistent with these comments.

parties receiving collect calls. Further, the Attorneys General support a two-part disclosure system requiring the OSP to provide a quote for all charges imposed for the first minute followed by a quote for each subsequent minute.

The most obvious benefit of universal rate disclosure is that OSPs charging outrageous rates will no longer be able to surprise consumers with a staggering bill weeks or months after the call in question. Rather, consumers, after hearing the rate disclosure, will be able to decide whether to incur the quoted cost or to access another provider. This disclosure provides price information to those relatively unsophisticated consumers who are not aware of their ability to dial around to other providers. These consumers will better be able to decide whether to look for another public phone or to place the call at another time. Furthermore, while recipients of collect calls would still not enjoy the ability to select the carrier, they would at least be in possession of accurate rate information when deciding whether or not to accept the charges.

Consumers are entitled to know what charges would be imposed. The Attorneys General agree with the Colorado PUC Staff's comments: "[d]isclosure of prices prior to consummation of a transaction is a basic tenet of our economic system. . . ." (Quoted in the SFNPRM, par. 34.) This principle requires the price of all calls to be disclosed regardless of the rate or the identity of the provider.

Moreover, the universal disclosure requirement will be helpful to consumers who are generally not familiar with OSP charges. The Attorneys General agree with the Commission's suggestion that consumers are more likely to be aware of charges for residential 1+ calls than for 0+ calls. Consumers generally place the bulk of their long-distance calls from home, not from public phones. Indeed, the marketing efforts of OSPs are primarily directed not at the end user,

but at the site owner or other entity who chooses the presubscribed OSP for a public phone. Interexchange carriers (IXCs) have more heavily advertised specific prices and pricing plans for residential 1+ interLATA service than for 0+ calls from public phones. Furthermore, even relatively informed consumers, who have generally accurate expectations about the dominant IXCs' charges for 0+ calling card calls, may not have any idea about charges for the more expensive 0+ calls, such as person-to-person calls.

While OSPs whose rates are not excessive may prefer not to provide rate disclosures, the Attorneys General believe the universal disclosure requirement will not create an unfair burden, but will actually be advantageous, to these companies. Lower-priced OSPs will not suffer in the consumers' perceptions. Once consumers become accustomed to hearing disclosures every time they place a call (including from major carriers such as AT&T, Sprint, and MCI), these lower-priced OSPs will benefit from the comparison with the higher-priced providers' rates. Second, from a regulatory perspective, universal disclosure treats all providers equally. This will further disarm criticism that choosing a given rate level to trigger rate disclosures would be arbitrary or discriminatory.

A universal rate disclosure system is simple, can be quickly implemented, and has minimal administrative burden. The alternative, a system premised on a potentially complicated set of benchmarks, would require substantially more time to develop. Dominant OSPs charges would have to be analyzed to determine the appropriate benchmark rates. The alternative would also necessitate ongoing revisions as the dominant OSPs revise their rates, and further, the alternative requires lag time to allow other OSPs to revise their rates and disclosures.

B. Disclosure Of All OSP Charges For The First And For Each Subsequent Minute.

The Attorneys General strongly recommend that OSPs be required to disclose their rates in a two-part message. Such a message should disclose all charges for the first and subsequent minutes. (This is now commonly provided to callers contemplating paying by coin for long-distance calls. These disclosures for "sent-paid" calls are simple, short, and easily understood.)

Consumers would not be adequately informed by a simple rate quote for a hypothetical 7-minute call. Without disclosure of commissions (such as operator-handling surcharges, and any other first-minute charges), consumers will be tempted to divide a 7-minute quote into equal parts and arrive at inaccurately low estimates for shorter calls. Since many consumers make short calls from public phones, consumers should be given the information necessary to allow them to calculate the cost of their specific call. The disclosure of actual costs, on the other hand, does not require the consumer to engage in guesswork to arrive at the cost of a call.

As the Commission noted in the SFNPRM, par. 11, n. 27, section 201(b) of the Communications Act of 1934, as amended, prohibits communications rates that are unjust or unreasonable. 47 U.S.C. § 201(b). The adoption of a universal rate disclosure requirement does not preclude the establishment of an absolute rate ceiling above which charges would be prohibited as unjust or unreasonable.

The Attorneys General again note that a very frequent complaint of consumers is that they did not realize that the call in question would be carried by some OSP other than the company which issued their calling card. The identity of the OSP is often obliterated if printed and not understood by the consumer when recited. Clearly, the consumer should have the right to use a carrier of choice. The Attorneys General therefore urge the Commission to require OSPs to

disclose their identity immediately before the disclosure in a manner that makes it absolutely clear to consumers which OSP will be carrying the call.

In summary, the Attorneys General believe a complete and accurate universal rate disclosure requirement will increase consumer awareness and lead to more competitive pricing.

III. THE OSP BENCHMARK RATES SHOULD BE BASED ONLY UPON CONSUMER'S COST EXPECTATIONS

Although the Attorneys General prefer the universal rate disclosure requirement discussed above, a properly structured benchmark system may provide consumers with enough information to be able to avoid some unreasonable, excessive OSP charges, if certain concerns are removed.

At the outset, the Attorneys General note that some commentators in this era of deregulation have expressed concern about the possible anticompetitive effects of benchmark systems in general.

The Commission has suggested that the average rates, plus a certain margin, should trigger a disclosure requirement. The Attorneys General are concerned that the number of consumers, who would incur charges above their presumed expectations yet not receive a disclosure message, will increase in proportion to the size of the margin.

If the Commission decides upon a benchmark approach, there should certainly be periodic adjustment. The Attorneys General have concerns about how the benchmarks are established and revised. If the benchmark is the average of the charges of the three baseline carriers, at least one of the carriers would be required to give greater disclosure than the other two. Even if the benchmark includes a margin above the average, how will the average or the benchmark determined if: (a) one of the three develops a short term sale price? (b) AT&T sets its price in

January, MCI in February, and Sprint in March, followed by new prices sporadically set by each? (c) one of the three companies charges more than the other two for the first minute but less for longer calls? (d) one carrier decides to bill calls in one-minute increments while the other two charge by 6-second billing increments? (e) one carrier has lower prices for short calls but higher prices for long calls, or lower prices at night but higher prices during the day?

The Attorneys General reiterate their opposition to the CompTel proposal, which argues for benchmarks set just below rates that are claimed to result in the greatest number of consumer complaints. The CompTel proposal operates from a faulty premise -- that only rates steep enough to cause a veritable avalanche of consumer complaints are unjust or unreasonable. This self-serving theory is wholly unacceptable, since many consumers would consider rates unjust, unreasonable, and excessive, even though the charges may not be excessive enough to induce them to take the time and trouble to file a complaint with the FCC or a state regulatory agency. The Attorneys General agree with Ameritech's observation: "[T]he number of consumer complaints that a rate precipitates is an inappropriate benchmark for implementing this mandate. Indeed, rates that are so high as to result in large numbers of consumer complaints are likely to be well above the level that is properly presumed just and reasonable." SFNPRM, par. 17. Many OSPs agree with our assessment that CompTel's proposed benchmarks are too high.

IV. TARIFFING ISSUES

The Commission seeks comment on whether it should forbear from requiring nondominant OSPs to file informational tariffs as required by TOCSIA, 47 U.S.C. § 226 (h)(1)(A). Such forbearance would be based upon the authority of section 10(a) of the

Communications Act, 47 U.S.C § 10 (a). Therefore, to forbear from requiring OSPs to file informational tariffs, the Commission must determine that such tariffs are unnecessary to ensure that OSPs' charges, practices, and classifications are just, reasonable and not unjustly or unreasonably discriminatory; that such tariffs are unnecessary to protect consumers; and that forbearance from requiring such tariffs would be in the public interest.

Tariffs have a long history as consumer protection devices, having been adopted largely for the purpose of requiring railroads and other common carriers to charge the same rates to all shippers of goods, regardless of the volume or amount shipped, or whether a shipper was or was not in some way preferred by a railroad. See, e.g., Robins v. Baltimore and Ohio R.R., 222 U.S. 506 (1912) (purpose of tariffs and rate schedules described). Disclosure of the rates charged, to the public and to regulators, as well as to individual shippers was the goal of such tariffs, and the manner in which the policy underlying such tariffs was to be effectuated.

The same general considerations pertain here. Requiring an OSP to disclose that its rates and charges are considerably in excess of what a consumer might typically expect to pay is desirable, because it makes this information available. There are other sound bases for the retention of informational tariffs as a consumer protection measure, in addition to such other measures as the Commission might adopt.

Informational tariffs are necessary to ensure that OSP charges and practices are just and reasonable. First, the initial mechanism available to determine whether OSP rates, charges, and practices are just and reasonable is a review of the informational tariffs by the Commission. See 47 U.S.C. § 226 (h)(2). Obviously, the forbearance from such tariffs would eliminate the Commission's oversight in this area. Second, the Commission recognizes that at least some OSPs

do not hesitate to mislead or indeed, to make outright false statements to consumers regarding their rates, charges, and conditions of service. See SFNPRM, par. 46.

It therefore appears likely that some of the less scrupulous OSPs, relieved of the need to file informational tariffs, will assess even more exorbitant rates and charges to consumers with or without having misrepresented those rates and charges to consumers of the point of sale. This seems especially likely if a benchmark disclosure is adopted. If a particular OSP is required to state that its rates and charges are higher than a consumer might normally expect, the OSP may well conclude that it has nothing to lose by assessing rates or charges that are astronomically higher than the consumer might normally expect. The filing of informational tariffs will counterbalance this tendency.

Finally, requiring OSPs to file informational tariffs does not impose an undue administrative burden on OSPs. The legislative history of TOCSIA indicates that Congress "[did] not expect that these informational tariffs would require the same amount of supporting documentation as required of most dominant carriers . . . [including] compliance with all the requirements of Part 61 of the FCC's rules." S. Rep. No. 439, 101st Cong. 2d Sess. (1990). Informational tariffs were intended to be and are more streamlined and less burdensome than other tariffs. Indeed, they can be filed contemporaneously with changes in rates, terms and conditions of service. See 47 U.S.C. § 226 (h)(1)(A).

The fact that informational tariffs have not been entirely effective in deterring unjust unreasonable rates, charges, or practices by OSPs is hardly a compelling reason for forbearance. A chief reason cited by the Commission for forbearance is the fact that consumers are often told, falsely, by OSPs that the filing of informational tariffs constitutes Commission approval for rates

and charges. Forbearance should not be based upon the fact that false statements regarding informational tariffs are made by those required to file them. Rather, the frequency of false statements by OSPs are a reason to provide stiffer penalties for OSPs who deceive consumers.

The "limited market failure," or "marginal market dysfunction" described by the Commission is not due to informational tariffing, but rather to unjust, unreasonable rates charged by OSPs. These existed before OSPs were required to file informational tariffs (see, generally, Congressional Findings, Pub. Law 101-435 § 2, 104 Stat. 986) and are, again, attributable to the greed of certain OSPs, rather than to any requirement that those OSPs disclose their rates, charges and terms of service to the Commission in the form of informational tariffs.

Finally, the tariffs are a significant, useful form of disclosure and protection for consumers, to the extent that consumer advocates and regulatory bodies can review the filings. Public scrutiny of OSP rates and charges cannot be harmful under these circumstances.

The Attorneys General recommend that OSP rates and charges, in addition to being available for public inspection at the FCC, be accessible online to the general public.

V. ENFORCEMENT

The Attorneys General recommend that the Commission provide for severe penalties for violations. In particular, the Commission should make clear that each failure to provide a required rate disclosure and each incident of billing above the rate quoted is a separate violation. The procedure for identifying and reporting violations should be clear and simple in order to encourage members of the public to report violations. The Attorneys General urge the Commission to consider ease and effectiveness of enforcement in determining how to best protect consumers.

VI. CONCLUSION

The Attorneys General remain very concerned about the consumer nightmare created by exorbitant, undisclosed rates and charges imposed by some OSPs. Immediate corrective action is necessary, until and unless BPP is implemented, to give consumers enough accurate information to make reasoned decisions whether to place a given 0+ call.

For the reasons stated above, the Attorney General urge the Commission to require all OSPs to provide verbal rate disclosures of the total price of the specific call to the party who will be billed for the call before the call is connected. The disclosure should clearly identify the carrier and set forth all applicable charges for the first minute and for each subsequent minute.

The Attorneys General are not opposed to a benchmark system, but prefer universal price disclosure. If the Commission decides to implement a benchmark system, it should address the concerns raised above.

The Commission should in any case provide for stiff penalties to encourage compliance and encourage members of the public to report violations.

Finally, the Attorneys General urge the Commission to maintain tariffing requirements for OSPs.

Respectfully submitted,

RICHARD BLUMENTHAL
Attorney General
State of Connecticut
Chairperson, Telecommunications Subcommittee
Consumer Protection Committee
National Association of Attorneys General